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SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 652

REVISION OF EXEMPTION AUTHORITY CITATIONS

AGENCY: Surface Transportation Board, Transportation.

ACTION: Final Rule.

SUMMARY: The Surface Transportation Board (Board or STB) is amending its regulations to change incorrect citations to its authority to exempt rail transportation, and to update miscellaneous references. The Board is also making changes to its authority citations.

EFFECTIVE DATE: These rules are effective on September 30, 2004.

FOR FURTHER INFORMATION CONTACT: John Sado, (202) 565-1661. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), recodified former 49 U.S.C. 10505 as 49 U.S.C. 10502 with minor changes. This section deals with the authority of the Board to exempt railroad transportation. A number of the Board's regulations still refer to 49 U.S.C. 10505. Accordingly, the Board will correct those citations.

Four rules refer to "former 49 U.S.C. 10505". See 49 CFR 1185.1(b), 1185.5(b), 1300.1(d), and 1313.1(b). These citations to former section 10505 are appropriate and will not be changed. However, section 1185.5(b) refers "to an exemption authorized by the STB under former 49 U.S.C. 10505. . . ." The reference to the STB rather than the Interstate Commerce Commission (ICC) is incorrect; when the regulation was issued, it correctly stated "ICC" rather than "STB".¹ Similarly, in section 1185.5(a) there is another instance where "STB" is incorrectly used in lieu of "ICC", this time in reference to former 49 U.S.C. 11343-44.² The Board will change both references to read "ICC".

¹ See Revision of Regulations for Interlocking Rail Officers, 1 S.T.B. 1087, 1099 (1996).

² Id.

In section 1150.1(a), there is a reference to “49 U.S.C. 11343”. ICCTA recodified former section 11343 as section 11323. Accordingly, that reference will be updated to read “49 U.S.C. 11323”. References to outdated telephone numbers in section 1105.12 will also be removed.

The authority citations in Part 1105 will be modified to more accurately reference the provisions that authorize agencies to comply with the Coastal Zone Management Act (16 U.S.C. 1451 et seq.) and the Endangered Species Act (16 U.S.C. 1531 et seq.). The new language will reference 16 U.S.C. 1456 and 1536, respectively, rather than 16 U.S.C. 1451 (definitions) and 1531 (definitions and policy). Also, for clarity, the parenthetical to the reference to 49 U.S.C. 701 note (1995) will be modified to read “(Savings Provisions)”.

The Board is also revising certain authority citations that cite the Administrative Procedure Act (APA). APA references are being removed where “the APA does not provide an independent basis of authority.”³

Finally, the Board will not presently make corrections in two sections: 49 CFR 1039.17 and 1090.2. Section 1039.17 deals with the exemption of contracts for protective services. The regulations at 49 CFR 1090.2 concern the exemption of rail and highway trailer-on-flatcar/container-on-flatcar service. The Board will not here update references in these sections because more significant changes may have to be made to them. Thus, these changes will be considered in separate proceedings.

Because these rule changes revise regulations to provide updated statutory references and make revisions that are not substantive, good cause is found to dispense with notice and comment. See 5 U.S.C. 553(b)(B). Moreover, good cause is found for making these rules effective on less than 30 days’ notice under 5 U.S.C. 553(d) to change the incorrect references as soon as possible.

The Board certifies that these changes in the rules will not have a significant impact on a substantial number of small entities. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1039

Agricultural commodities, Intermodal transportation, and Railroads.

³ Revision of Authority Citations, 2 S.T.B. 622, 623 (1997) (footnote omitted).

49 CFR Part 1101

Administrative practice and procedure.

49 CFR Part 1105

Environmental Impact Statements, Reporting and recordkeeping requirements.

49 CFR 1150

Administrative practice and procedure, Railroads.

49 CFR 1185

Administrative practice and procedure, Antitrust, and Railroads.

49 CFR 1201

Railroads, Uniform System of Accounts.

Decided: September 24, 2004.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams
Secretary

APPENDIX

For the reasons set forth in the preamble, Parts 1039, 1101, 1105, 1150, and 1185 of title 49, chapter X, of the Code of Federal Regulations are amended as follows:

PART 1039 — EXEMPTIONS

1. The authority citation for Part 1039 is revised to read as follows:

Authority: 49 U.S.C. 10502, 13301.

2. In §1039.10, remove the reference “10505” and in its place add “10502”.
3. In §1039.20, remove the reference “10505” and in its place add “10502”.

PART 1101 — DEFINITIONS AND CONSTRUCTION

4. The authority citation for Part 1101 continues to read as follows:

Authority: 49 U.S.C. 721.

5. In §1101.2(e)(5) remove the reference “10505” and in its place add “10502”.

PART 1105 — PROCEDURES FOR IMPLEMENTATION OF ENVIRONMENTAL LAWS

6. The authority citation for Part 1105 is revised to read as follows:

Authority: 16 U.S.C. 470f, 1456, and 1536; 42 U.S.C. 4332 and 6362(b); and 49 U.S.C. 701 note (1995) (Savings Provisions), 721(a), 10502, and 10903-10905.

7. In §1105.7(e)(5)(i)(C) remove the reference “10505” and in its place add “10502”.
8. In §1105.7(e)(5)(ii)(C) remove the reference “10505” and in its place add “10502”.
9. In the appendix to §1105.12, in second sample newspaper notice remove the reference “10505” and in its place add “10502”.
10. In the appendix to §1105.12, in both sample newspaper notices remove “202-927-6211.” and in its place add “[INSERT TELEPHONE NUMBER].”

**PART 1150 — CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE
RAILROAD LINES**

11. The authority citation for Part 1150 is revised to read as follows:

Authority: 49 U.S.C. 721(a), 10502, 10901, and 10902.

12. In §1150.1(a) remove the reference “49 U.S.C. 11343” and in its place add “49 U.S.C. 11323.”

13. In §1150.1(a) remove the reference “10505” and in its place add “10502”.

14. In §1150.32(c) remove the reference “10505(d)” and in its place add “10502(d)”.

15. In §1150.34 remove the reference “10505(d)” and in its place add “10502(d)”.

16. In §1150.35(f) remove the reference “10505(d)” and in its place add “10502(d)”.

PART 1185 — INTERLOCKING OFFICERS

17. The authority citation for Part 1185 is revised to read as follows:

Authority: 49 U.S.C. 721, 10502, and 11328.

18. In §1185.5(a) remove the first reference to “STB” and in its place add “ICC”.

19. In §1185.5(b) remove the first reference to “STB” and in its place add “ICC”.

PART 1201 — RAILROAD COMPANIES

20. The authority citation for Part 1201 is revised to read as follows:

Authority: 49 U.S.C. 11142 and 11164.